



City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 2306438
Applicant Name : Dan Duffus of Soleil LLC
Address of Proposal: 9115 23rd Avenue Northeast

SUMMARY OF PROPOSED ACTION

Master Use Permit to demolish an existing vacant nursing home facility of 19,000 square feet with 4,054 square feet of parking area and to construct four (4) two (2) unit townhouse structures with parking for eight (8) vehicles on one portion of the site. Future plans are for approximately 18 additional housing units and associated parking on the remainder of the site. The overall site contains Environmentally Critical Areas: Steep Slopes, Riparian Corridor and Liquefaction Prone Areas. Zoning is Lowrise 3 (L-3).

Environmental review resulting in a Threshold Determination is required pursuant to the Seattle State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code [SMC] Chapter 25.05). A site visit was conducted December 9, 2003. Public notice was published on December 12, 2003. The required public comment period ended on December 24, 2003. One telephone comment was received.

SEPA DETERMINATION: ☐ Exempt ☐ DNS ☐ MDNS ☐ EIS

☒ DNS with conditions

☐ DNS involving non-exempt grading or demolition or involving another agency with jurisdiction

BACKGROUND DATA

Site Description: This approximately 50,000 sq. ft. site is located between Ravenna Avenue Northeast and 23rd Avenue Northeast and south of Northeast 92nd Street. The western edge of the site slopes downward to Ravenna Avenue NE. This western portion of the site is mapped *steep slopes*. Also along the western property boundary and largely off site is a Class B *riparian*

corridor (a tributary of Thorton Creek). The off-site and on-site sloped areas and a portion of the flat area on-site and at the top of the slope are classified as *liquefaction prone*.

The site currently contains a vacant 19,000 square foot assisted care facility located in the flat portion of the site. There are existing surface parking areas along the eastern and southern flat portions of the site.

The site vicinity is comprised of a large multi-family condominium complex to the north across NE 92nd Street, in an L-3 zone, and single-family residences to the east across 23rd Avenue NE, in a Single-Family 5000 (SF 5000) zone. To the south of the site are two duplex townhouse units constructed within the past six years. To the west is Ravenna Ave NE and further to the west across the Thorton Creek tributary is Lake City Way NE.

Public Comment

One public inquiry was received by telephone asking about the likely height and width of any proposed structures along NE 92nd Street. A comment letter about MUP 2307950, for the construction of two (2) townhouse structures with four (4) units on existing lots 14 and 15 of this site, was received requesting the addition of a sidewalk on the south side of NE 92nd Street between Ravenna Avenue NE and 23rd Avenue NE due to dangerous conditions for pedestrians.

ANALYSIS - SEPA

The initial disclosure of the potential impacts of the proposed project was made in the environmental checklist dated November 6, 2003. The information in the checklist, supplemental information and the experience of the lead agency with the review of similar projects forms the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665) states, in part, "*where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation*" subject to some limitations. Thus, the mitigation that may be required pursuant to SEPA authority is limited. A discussion of likely adverse impacts and how they may be appropriately mitigated follows below.

The City of Seattle Regulations for Environmentally Critical Areas, SMC 25.09, define and provide regulations for development in steep slope areas. *Steep slopes* are defined as slopes of forty (40) percent average slope or greater, with a vertical elevation change of at least ten (10) feet. Development in *steep slope* areas is generally prohibited. However, when an area meeting the above definition of a *steep slope* but limited to a vertical elevation change of up to 20 feet and not part of a larger steep slope system, or created through pervious, legal grading activities, it may be exempted from the steep slope regulations. This exemption must be based on a geotechnical report demonstrating that no adverse impact will result from the exemption. The purpose of this exemption is to exclude small areas from the requirements of the *steep slope* regulations that otherwise can be shown to be safe for development.

Two Limited Exemptions from the requirements of SMC 25.09, Regulations for Environmentally Critical Areas were granted for portions of this site. A Limited Exemption was granted from the requirements for steep slopes for a previous proposal to convert the existing nursing home to a congregate care facility and community center (MUP 2205250), and still is applicable to this site. A second Limited Exemption (MUP 2301733) from the requirements for steep slopes was approved for the construction of 2 townhouse structures on the southeast portion of the site on April 23, 2003.

Short-Term Impacts

Codes and development regulations applicable to this proposal will provide sufficient mitigation for most impacts.

The following temporary or construction-related impacts are expected: 1) decreased air quality due to increased dust and other suspended air particulates during demolition; 2) increased noise and vibration from demolition and construction operations and equipment; 3) temporary soil erosion and impacts on the ECA riparian corridor; 4) conflict with normal traffic movement adjacent to the site; and impacts to ECA areas, such as steep slopes and riparian corridors. These impacts are not considered significant because they are temporary and/or minor in scope (Section 25.05.794, SMC). Although not significant, the impacts are adverse and certain mitigation measures are appropriate as specified below.

City codes and/or ordinances apply to the proposal and will provide mitigation for some of the identified impacts. Specifically these are: 1) Street Use Ordinance (watering streets to suppress dust, obstruction of the vehicular and pedestrian right-of-way during demolition and construction; 2) Building Code (demolition measures in general); and 3) Stormwater, Drainage and Grading Code (temporary soil erosion impacts on the Thorton Creek tributary. Compliance with these applicable codes and ordinances will be adequate to achieve sufficient mitigation and further mitigation by imposing specific conditions is not necessary for these impacts.

Air Quality

The structure to be demolished is approximately 60 years old. Because of its age, it may contain asbestos. No environmental site assessment was submitted with this application to address this concern. Puget Sound Clean Air Agency (PSCAA), Department of Labor and Industry, and EPA regulations provide for the safe removal and disposal of asbestos. However, no permit process exists that ensures that PSCAA has been notified of the proposed building demolition and or that asbestos may be on the site. A condition shall be added requiring the applicant to submit to DPD a copy of the PSCAA Notice of Intent to Demolish prior to issuance of the DPD demolition permit. This condition is imposed pursuant to SEPA authority to mitigate air quality, construction and environmental health impacts, SMC 25.05.675 A, B, and F.

Noise

There will be demolition of a 19,000 square foot single-story structure and associated surface parking. Due to the proximity of other residential uses, the limitations of the Noise Ordinance are found to be

inadequate to mitigate the potential noise impacts. Pursuant to the SEPA Overview Policy (SMC.25.05.665) and the SEPA Construction Impacts Policy (SMC 25.05.675 B), additional mitigation is warranted.

In addition to the Noise Ordinance requirements, to reduce the noise impact of demolition on nearby properties, activities shall be limited to non-holiday weekdays between 7:30 A.M and 6:00 P.M. In addition to the Noise Ordinance requirements, to reduce the noise impact of construction on nearby residences, only low noise impact work shall be permitted on Saturdays from 9:00 A.M. to 5:00 P.M.

Long-Term Impacts

The overall site containing the nursing home structure and its associated parking to be demolished consists of eighteen (18) existing platted lots. In addition to the 4 townhouse structures containing 8 units on 4 of these lots included with this application (comprising Lots 16, 17, 18, and 19 by Soleil LLC, also known as Parcel "A"), submitted plans and information supplied with this application indicate that approximately 18 additional units on the remaining 14 lots are also proposed and dependent on this demolition as a part of their approval. These additional developments are as follows: Parcel "B" comprising Lots 4, 5, 6, and 7 with approximately two (2) units by 42nd Avenue West LLC; Parcel "C" comprising Lots 1, 2, and 3 with approximately four (4) units by PJ Ravenna LLC; Parcel "D" comprising Lots 21, 22, and 23 with eight (8) units by Granger Construction; and Lots 14 and 15 containing four (4) units by KD Ridge (no parcel name).

Pursuant to SEPA authority to consider all anticipated impacts from a proposal, the long-term impacts of approximately 26 housing units should be considered. The SEPA Cumulative Effects Policy (SMC 25.05.670) states, in part, *"# 1. A project or action which by itself does not create undue impacts on the environment may create undue impacts when combined with the cumulative effects of prior or simultaneous developments; further, it may directly induce other developments, due to a causal relationship, which will adversely affect the environment, and, # 2. An individual project may have an adverse impact on the environment or public facilities and services which, though acceptable in isolation, could not be sustained given the probable development of subsequent projects with similar impacts."*

Based on the anticipated 26 housing units for this site the following long-term impacts are expected from this project: 1) Increased vehicle trips on adjacent streets, 2) Increased pedestrian usage on adjacent streets, 3) Increased demand on public services and facilities as described in SMC 25.05.675, such as storm water run-off and storm drains, 4) Construction in a Liquefaction-Prone Area; and 5) Impacts on the adjacent Riparian Corridor. These impacts are not considered significant (Section 25.05.794, SMC). Although not significant, the impacts are adverse and certain mitigation measures are appropriate as specified below.

City codes and/or ordinances apply to the proposal and will provide mitigation for some of the identified impacts. Specifically these are: 1) Land Use Code for required street dedication and widening along 23rd Avenue NE and a portion of NE 92nd Street; 2) Land Use Code for required pedestrian

improvements (curb, gutter, planting strip and street trees along 23rd Avenue NE and a portion of NE 92nd Street; 3) Stormwater and Drainage Code for mitigation of storm water run-off impacts, 4) Environmentally Critical Areas Regulations (SMC 25.09.100) for review of building construction plans and submittal of a soils engineering study (provided by applicant and which states that on-site soils (classified as Liquefaction Prone) are “highly stable”), and 5) Mitigation through the Stormwater and Drainage Code for impacts on the Thorton Creek tributary. Compliance with these applicable codes and ordinances will be adequate to achieve sufficient mitigation for the segments of the expected developments affected by Code, with the exception of the pedestrian environment, and further mitigation by imposing specific conditions is not necessary for these impacts.

Pedestrian Environment

NE 92nd Street, although not an arterial, almost functions as one. It is one of only a few east to west streets extending from Lake City Way to 35th Avenue NE to the east through the neighborhoods in between. It is a paved street, but is both undersized for pavement width and width of right of way pursuant to current City Code. It does not have sidewalk, curbs, or shoulders on either side between Ravenna Avenue NE and 23rd Avenue NE, or beyond 23rd Avenue NE to the east. There is a Metro bus stop at the corner of Ravenna Avenue NE and NE 92nd Street adjacent to the site serving the neighborhood. Consequently, it is a very busy street for both pedestrians and vehicles but does not have adequate space for vehicles and provides no walking area for pedestrians other than in the vehicle lanes.

The addition of up to 26 new housing units will produce peak and off-peak hour vehicle trips on both 23rd Avenue NE and NE 92nd Street. Pedestrian peak and off-peak hour trips for transportation and general neighborhood mobility will also be produced by the residents of the units.

Pursuant to SMC 23.53.015 “*Improvement Requirements for Existing Streets in Residential and Commercial Zones*” one-half street improvements are required along 23rd Avenue NE. These include dedication of right of way, curb, gutter, planting strip, sidewalk, and street trees. These requirements, however, have been reduced pursuant to SMC 23.53.015.D “*Exceptions*” which allows a reduced ROW width for streets that have mixed zoning and are not through streets. The zoning on the project side of the street is Lowrise 3 and across the street is Single Family 5,000. The street is a dead end that will not be extended due to steep slopes. Normal full half-street improvements may be required by existing Land Use Code adjacent to Parcel D along NE 92nd Street because it is a through street and bordered by L3 zoning on both sides.

The expected number of units on Parcel C, if the only proposed development for this site, would not require street improvements (SMC 23.53.015.D.2.b), unless adverse impacts requiring mitigation are identified during the SEPA review process. To this effect, SMC 23.53.015.A.5 states: *The regulations in this section are not intended to preclude the use of Chapter 25.05 of the Seattle Municipal Code, the SEPA Ordinance, to mitigate adverse environmental impacts.* Several factors specific to Parcel C contribute to the adverse impacts of this development on the pedestrian and vehicular environment of NE 92nd Street in addition to its contribution to additional vehicular and

pedestrian street use impacts as a part of the development of this overall site. The northern boundary of Parcel C is supported by a rock retaining wall that is almost entirely within the right of way of NE 92nd Street. The location of this wall in the right of way prevents adequate off-pavement area for pedestrian passage and for the sidewalk-street improvements along Parcel D on NE 92nd Street. (At the closest point to the street pavement there is approximately three feet of horizontal clearance; the majority of the wall is approximately 5 feet from the pavement.) The current pavement and right of way width of NE 92nd Street, which does not meet the current Code standards of 32 feet and 52 feet respectively, does not have adequate width for allowing a pedestrian walk-way or sidewalk to be included into the current road surface. However, the existing roadway configuration has been found to be adequate for drainage and utility purposes. It is the roadway's narrow width in combination with the expected increase in both vehicular and pedestrian use that creates a hazard to pedestrians by the current lack of adequate space and walkway facilities for walking. These factors warrant mitigation of this adverse environmental impact on NE 92nd Street pursuant to *SMC 25.05.670 and SMC 25.05.675, Cumulative Effects Policy and Specific Environmental Policies – Traffic and Transportation*.

SEPA Policy for mitigation of identified adverse impacts requires that mitigation be “reasonable” (SMC 25.05.660.A.3). Established judicial interpretation of the extent of agency substantive authority in placing mitigation conditions on a project require a proportionality between the mitigation and the adverse impact. The cumulative effect of the additional vehicular and pedestrian impacts on NE 92nd Street is not solely the cause of the additional units on Parcels C and D, but from the anticipated total number of units on the site. The removal of the rock retaining wall adjacent to Parcel C and either its relocation or the re-grading of the adjacent hillside to an acceptable slope, any relocation of existing utilities, such as Seattle City Light power poles, and the possible dedication of Code required additional right of way to construct full street improvements are development costs that must be considered when determining appropriate mitigation. For Parcel C, in consideration of the additional cost of the retaining wall removal and replacement or grading along with the cumulative adverse impact this project places on the vehicular and pedestrian environment, a condition shall be added to construct reduced street improvements to the section of NE 92nd Street adjacent to Parcel C between the western edge of Parcel D to Ravenna Avenue NE. Specifically, these are possible extended road surface paving of the project side of NE 92nd Street and the addition of a 5-foot wide asphalt walkway extending to the Metro bus stop at the intersection of Ravenna Avenue NE and NE 92nd Street. The asphalt walkway may include an extruded asphalt curb or other means of separating the pedestrian walkway from the traffic lane; the exact configuration will be subject to Seattle DOT standards. For Parcel D, if street improvements are not required because of the phasing of the application and construction of the anticipated housing units, a minimum mitigation of the adverse effects on the pedestrian environment will be the construction of the above described 5-foot asphalt walkway between 23rd Avenue NE and Parcel C.

The rock retaining wall along the northern boundary of Parcel C is in a steep slope area. The steep slope was created by the construction of the street and right of way improvements for NE 92nd Street and the original grading for the existing nursing home facility. Construction of the above conditioned street improvements in the steep slope on and adjacent to Parcel C will be possible through the

Exceptions sub-section of SMC 25.09.180. This sub-section states that steep slopes resulting from improvements to the right of way and for sites that have been previously developed may be exempted from compliance with the ECA regulations (SMC 25.09.180.D.2 and 3).

DECISION – SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public of agency decisions pursuant to SEPA.

[X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(C).

[] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(C).

CONDITIONS - SEPA

Prior to Issuance of Demolition Permits

1. The applicant shall submit to DPD a copy of the PSCAA Notice of Intent to Demolish prior to issuance of the DPD demolition permit.

During Building Demolition, Site Work and Building Construction

2. Demolition and construction activities shall be limited to non-holiday weekdays between 7:30 A.M and 6:00 P.M. In addition to the Noise Ordinance requirements, to reduce the noise impact of construction on nearby residences, only low noise impact work shall be permitted on Saturdays from 9:00 A.M. to 5:00 P.M.

Prior to Final Approval of Building Permit(s) for Parcel C (Lots 1, 2, and 3 by PJ Ravenna) and Parcel D (Lots 20, 21, and 22 by Granger Construction)

3. Street improvement requirements shall be pursuant to SMC 23.53. However, for any parcel fronting NE 92nd Street that is not required by Code to install full street improvements, including any project otherwise exempt from the street improvement requirements, a walkway must be installed (typically 5-foot minimum asphalt) connecting 23rd Avenue NE and Ravenna Avenue NE. The asphalt walkway may include an extruded asphalt curb or other means of separating

the pedestrian walkway from the traffic lane. The exact configuration will be subject to Seattle DOT standards and review. At a minimum, a completed Street Use Permit application with SDOT will be required prior to approval of any building permits for either Parcel C or D.

Signature: _____ (signature on file) Date: April 29, 2004

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